

**ASSEMBLY BILL**

**No. 2009**

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**Introduced by Assembly Member Nakano**  
**(Principal coauthor: Assembly Member Alquist)**  
(Coauthor: Senator Oller)

February 15, 2002

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An act to amend Sections 21660, 21661, 21662, 21663, 21664, 21665, 21666, 21667, 21668, 21669, and 21669.1 of, to amend the heading of Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of, and to add Sections 21661.1 and 21663.1 to, the Business and Professions Code, relating to swap meets and open air markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2009, as introduced, Nakano. Swap meets: open air markets.

Existing law regulates the operation of swap meets where merchandise is offered for sale and exchange. Under existing law, a violation of the provisions regulating these events is punishable as a misdemeanor offense.

This bill would revise the provisions relating to swap meets and would regulate the operation of an open air market and would define it, in part, as any recurring event offering primarily new merchandise for sale that is conducted at the same location 12 or more times per year and charges a fee to vendors and to prospective buyers for parking or for admission.

Because a violation of the provisions regulating an open air market would be punishable as a misdemeanor offense, the bill would create a new crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code is amended to read:

Article 6. Swap Meets *and Open Air Markets*

SEC. 2. Section 21660 of the Business and Professions Code is amended to read:

21660. It is the intent of the Legislature in enacting this article ~~to require the statewide reporting of personal property exchanged, sold or offered for sale or exchange at "swap meets" in a provide for the uniform manner designed to permit the correlation of such reports with other reports of law enforcement agencies in order to assist in tracing and recovering stolen property and with the State Board of Equalization to detect possible sales tax evasion regulation of open air markets and swap meets for the purpose of insuring that swap meet operators and vendors and open air market operators and vendors are in complete compliance with all state laws and regulations applicable to displaying, offering for sale, selling, and exchanging new and previously owned merchandise.~~

This article shall apply to swap meet operators and vendors, ~~as defined herein and open air market operators and vendors~~, unless the ~~personal property or merchandise or~~ the transaction is specifically exempt ~~herein under this article~~ and shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any ~~such~~ local ordinances or charters or provisions. Nothing ~~herein~~ contained in this article shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit *open air markets*

1 or swap meets ~~where such~~ if local land use or zoning regulations  
2 prohibit ~~such~~ those operations.

3 Any transaction ~~which~~ that is regulated by this article shall not  
4 be subject to the provisions of Article 4 (commencing with Section  
5 21625), regulating transactions in identifiable secondhand  
6 tangible personal property. No person, partnership, or corporation  
7 shall be considered a “secondhand dealer” within the meaning of  
8 Section ~~21661~~ 21626 because of activities regulated by this  
9 article.

10 Article 5 (commencing with Section 21650) of this chapter shall  
11 not apply to swap meet operators and vendors.

12 SEC. 3. Section 21661 of the Business and Professions Code  
13 is amended to read:

14 21661. As used in this article:

15 (a) (1) “Open air market” means any regularly recurring  
16 event offering primarily new merchandise for sale that meets all of  
17 the following conditions.

18 (A) Vendors are charged a fee for the privilege of offering or  
19 displaying merchandise for sale.

20 (B) A fee is charged to prospective buyers for parking or for  
21 admission to the area where the merchandise is offered for sale.

22 (C) It is conducted on real property owned by the operator or  
23 leased to the operator for a period of at least one year.

24 (D) It is conducted at the same location 12 or more times per  
25 year.

26 (2) An open air market may include an event conducted indoors  
27 or an event using the term “swap meet” or “flea market” in its  
28 name or advertising if it meets all the conditions specified in  
29 subparagraphs (A) to (D), inclusive, of paragraph (1).

30 (b) “Open air market operator” means any person,  
31 partnership, organization, or corporation that controls, manages,  
32 conducts, or otherwise administers an open air market.

33 (c) “Open air market vendor” means any person, partnership,  
34 organization, or corporation that sells or offers for sale any  
35 merchandise at an open air market.

36 (d) (1) “Swap meet” means any event:

37 ~~(1) At which two or more persons offer personal property~~  
38 ~~merchandise for sale or exchange; and~~

39 ~~(2) At which a and that meets one of the following conditions:~~

1 (A) A fee is charged for the privilege of offering or displaying  
2 ~~personal property merchandise~~ for sale or exchange; ~~or~~

3 ~~(3) At which a.~~

4 (B) A fee is charged to prospective buyers for *parking or for*  
5 admission to the area where ~~personal property merchandise~~ is  
6 offered or displayed for sale or exchange; ~~or~~

7 ~~(4) Regardless of the number of persons offering or displaying~~  
8 ~~personal property or the absence of fees, at which used personal~~  
9 ~~property is offered or displayed for sale or exchange if the.~~

10 (C) The event is held more than six times in any 12-month  
11 period.

12 ~~(5)~~

13 (2) The term “swap meet” is interchangeable and applicable to  
14 “flea markets,” “indoor swap meets,” or other similar terms,  
15 regardless of whether these events are held either inside a building  
16 or outside in the open. The primary characteristic is that these  
17 activities involve a series of sales sufficient in number, scope, and  
18 character to constitute a regular course of business. “*Swap meet*”  
19 *does not include an open air market.*

20 ~~(b)~~

21 (e) “Swap meet operator” means any person, partnership,  
22 organization or corporation ~~which~~ *that* controls, manages,  
23 conducts or otherwise administers a swap meet.

24 ~~(e) “Vendor”~~

25 (f) “*Swap meet vendor*” means any person, partnership,  
26 organization or corporation who exchanges, sells, or offers for sale  
27 or exchange any ~~personal property merchandise~~ at a swap meet. A  
28 *swap meet* vendor shall be classified according to the following  
29 categories:

30 (1) A “casual *swap meet* vendor” means a vendor who  
31 participates in a swap meet ~~three~~ *two* times or less per ~~month~~ *year*.

32 (2) A “regular *swap meet* vendor” means a vendor who  
33 participates in a swap meet ~~four~~ *three* or more times per ~~month~~  
34 *year*.

35 ~~(3) A “monthly vendor” means a vendor who participates in~~  
36 ~~a swap meet under the terms of a lease of one or more months~~  
37 ~~undertaken with a swap meet operator.~~

38 SEC. 4. Section 21661.1 is added to the Business and  
39 Professions Code, to read:

1 21661.1. An open air market shall meet one of the following  
2 conditions:

3 (a) Be operated by an open air market operator who is  
4 accredited by the California Swap Meet Association.

5 (b) All of its open air market vendors either hold a business  
6 license issued by a city, county, or city and county of this state or  
7 operate under a business license issued to the open air market  
8 operator by the city, county, or city and county in which the open  
9 air market is located.

10 SEC. 5. Section 21662 of the Business and Professions Code  
11 is amended to read:

12 21662. The provisions of this article shall not apply to:

13 (a) An event held not more than two times per calendar year  
14 ~~which~~ *that* is organized for the exclusive benefit of any  
15 community chest, fund, foundation, association, or corporation  
16 organized and operated for religious, educational, hospital, or  
17 charitable purposes, ~~provided that if~~ no part of any admission fee  
18 or parking fee charged vendors or prospective purchasers, or the  
19 gross receipts or net earnings from the sale or exchange of ~~personal~~  
20 ~~property merchandise~~, whether in the form of a percentage of the  
21 receipts or earnings, as salary, or otherwise, inures to the benefit  
22 of any private shareholder or person participating in the  
23 organization or conduct of the event.

24 (b) ~~An event at which all of the personal property offered or~~  
25 ~~displayed is new, and all persons selling, exchanging, or offering~~  
26 ~~or displaying personal property for sale or exchange are~~  
27 ~~manufacturers or licensed retail or wholesale merchants.~~

28 (c) ~~Any vehicle or trailer.~~

29 (d) ~~Any or any~~ vehicle accessory or vehicle part usable for a  
30 motor vehicle eligible for vehicle registration under Section 5004  
31 of the Vehicle Code, and items of memorabilia or history, or both,  
32 relating to these vehicles.

33 SEC. 6. Section 21663 of the Business and Professions Code  
34 is amended to read:

35 21663. (a) Every *swap meet* vendor shall report all ~~personal~~  
36 ~~property merchandise~~ offered or displayed for sale or exchange on  
37 a form, prescribed or approved by the California Department of  
38 Justice, containing all the following information:

39 (1) The name and address of the *swap meet* vendor.

(2) A description of the ~~personal property~~ *merchandise* offered for sale or exchange, including serial numbers and personal identification marks, or ~~where if~~ there is no serial number, other identification marks or symbols, if any, or a general description of the ~~property item~~.

(3) A certification by the *swap meet* vendor that to ~~the vendor's~~ *his or her* knowledge and belief, the information contained on the form is true.

(4) The make, year, color, state of registration, and license number of the vehicle or vehicles in which the ~~personal property~~ *merchandise* is transported to the swap meet.

(5) The California seller's permit number (State Board of Equalization sales tax number), if any, of the *swap meet* vendor.

(6) The *swap meet* vendor's motor vehicle driver's license number and its state of issuance or California identification card numbers.

(7) If the *swap meet* vendor is an agent of an individual, company, partnership or corporation, the name and business address of the principal.

(8) The dates of sale for which the report is made.

(9) A receipt number given by the swap meet operator for the dates of the sale or the space used by the *swap meet* vendor.

(10) A requirement that the *swap meet* vendor check an appropriate box ~~which that~~ sets forth ~~the vendor's~~ *his or her* permit number for sales tax purposes.

If the *swap meet* vendor's permit number is not listed in the appropriate place on the form, the *swap meet* vendor shall indicate that he or she has not and does not contemplate making more than two sales of sufficient size, scope, and character within a 12-month period to require a permit.

(b) In addition to the official governmental form, consisting of an original and at least two copies, the information required may be recorded on a computerized or other similar record ~~which that~~ contains the same information required by subdivision (a).

(c) In no case shall a swap meet owner or operator be liable or responsible for the accuracy of, or any discrepancy in, any information submitted by the swap meet vendors on the forms provided to them by the swap meet owners or operators.

SEC. 7. Section 21663.1 is added to the Business and Professions Code, to read:

1 21663.1. (a) An open air market vendor shall at a minimum  
2 provide to the open air market operator the following information  
3 prior to offering merchandise for sale at the event:

4 (1) The name and address of the open air market vendor.

5 (2) The California seller's permit number (State Board of  
6 Equalization sales tax number) of the open air market vendor.

7 (3) The open air market vendor's motor vehicle driver's license  
8 number and its state of issuance or California identification card  
9 number.

10 (4) The open air market vendor's business license number and  
11 its city or county of issuance unless operating under a business  
12 license issued to the open air market operator.

13 (b) The open air market operator shall maintain the information  
14 required by this section in written or electronic form for six months  
15 after the date of its receipt and shall make copies of the information  
16 available for inspection, upon request, to any peace officer or any  
17 authorized representative of the Board of Equalization or  
18 Department of Justice.

19 (c) In no case shall the open air market operator be liable for the  
20 accuracy of, or any discrepancy in, any information submitted by  
21 an open air market vendor.

22 SEC. 8. Section 21664 of the Business and Professions Code  
23 is amended to read:

24 21664. (a) The swap meet operator shall obtain sufficient  
25 blank forms from the Department of Justice at a cost not to exceed  
26 the actual cost to the department, or shall cause to be printed and  
27 be available sufficient forms approved by the department, for the  
28 use of *swap meet* vendors ~~attending the swap meet~~, and shall  
29 distribute them to *swap meet* vendors as needed. The *swap meet*  
30 vendor shall submit the completed form to the *swap meet* operator  
31 who shall note on the *swap meet* vendor's copy that the *swap meet*  
32 vendor has submitted the form. The *swap meet* vendor shall  
33 submit the form to the swap meet operator prior to the close of the  
34 business day on which the item is to be placed on sale. The swap  
35 meet operator shall provide this form required by subdivision (a)  
36 of Section 21663 to the chief of police, if the swap meet occurs  
37 within the territorial limits of an incorporated city, or the sheriff,  
38 if the swap meet occurs outside a city, within 24 hours, or, before  
39 the end of the first working day following the swap meet. The  
40 original shall also be available to the State Board of Equalization



1 to permit them to detect possible sales tax evasion. The reports  
2 shall not be utilized by a chief of police, a sheriff, the Department  
3 of Justice, or any other governmental agency for the purpose of  
4 providing a permanent record of property ownership, nor shall the  
5 information derived from these reports form the basis for any  
6 record other than reports ~~which~~ *that* assist in tracing and  
7 recovering of stolen property or assist in detecting sales tax  
8 evasion.

9 (b) Every *swap meet* vendor shall submit to the swap meet  
10 operator the form disclosing the information required by  
11 subdivision (a) of Section 21663 for each swap meet at which he  
12 or she is a *swap meet* vendor prior to the close of the business day  
13 at which the item is to be placed on sale. Items described in reports  
14 previously submitted pursuant to paragraph (2) of subdivision (a)  
15 of Section 21663 may be omitted from the description on the forms  
16 submitted at subsequent swap meets if the *swap meet* vendor  
17 furnishes the swap meet operator of each subsequent swap meet  
18 with two copies of the report previously submitted, marked to  
19 indicate personal property currently being offered or displayed.

20 (c) A *swap meet* vendor who regularly offers or displays for  
21 sale or exchange any ~~new or used personal property or~~  
22 merchandise shall be required to submit to the swap meet operator  
23 the form disclosing the information required by subdivision (a) of  
24 Section 21663 only once every 60 days. The *swap meet* vendor  
25 shall, however, submit a new report at any swap meet at which he  
26 or she is a *swap meet* vendor and offers or displays for sale or  
27 exchange any ~~personal property~~ *merchandise* not included by  
28 generic classification in the previously submitted report. For  
29 purposes of this subdivision, a *swap meet* vendor shall be deemed  
30 to regularly offer or display for sale or exchange any items of  
31 merchandise if ~~such~~ *the swap meet* vendor participates for four or  
32 more days in a month at a swap meet conducted at the same  
33 location. Any *swap meet* vendor claiming to be a regular seller of  
34 ~~new or used~~ merchandise under the provisions of this subdivision  
35 shall so indicate on the bimonthly report.

36 (d) Every *swap meet* vendor shall submit to the swap meet  
37 operator the form disclosing the information required by  
38 subdivision (a) of Section 21663 for each swap meet at which he  
39 or she is a *swap meet* vendor prior to the business day on which  
40 the item is to be placed on sale. A *swap meet* vendor who regularly



offers or displays merchandise for sale or exchange shall be required to submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 only once every six months, provided the *swap meet* vendor has a written agreement with the swap meet operator for a periodic term of one month or longer. All other casual *swap meet* vendors shall submit the form disclosing the information required by subdivision (a) of Section 21663 on each instance of offering merchandise for sale or exchange at the swap meet.

SEC. 9. Section 21665 of the Business and Professions Code is amended to read:

21665. (a) Swap meet operators shall retain a copy of the reports collected by them for six months and shall make the copies available for inspection, upon request, by a peace officer as defined in Section 830.1 or subdivision (a) of Section 830.3 of the Penal Code, or a peace officer of the Department of the California Highway Patrol as defined in subdivision (a) of Section 830.2 of the Penal Code, when the swap meet occurs on state property, or properly identified representatives of the State Board of Equalization or Department of Justice.

(b) ~~Vendors~~ *Swap meet vendors* shall have available for inspection during the swap meet a completed copy of the report form ~~which that~~ was submitted to the swap meet operator describing the goods offered or displayed for sale or exchange at the swap meet.

SEC. 10. Section 21666 of the Business and Professions Code is amended to read:

21666. (a) *The provisions of this section apply to both swap meets and open air markets.*

(b) Upon request, a vendor shall provide the purchaser a written receipt disclosing the vendor's name and address for any ~~items~~ *item* purchased ~~which that~~ has a selling price in excess of ~~fifteen~~ *twenty-five* dollars ~~(\$15)~~ (\$25).

~~(b)~~

(c) No vendor shall offer or display ~~at a swap meet~~ *an event* any ~~new or used personal property or merchandise of a kind which that~~ the swap meet operator has expressly prohibited. Every ~~swap meet~~ *owner* operator shall post or display in prominent places at the ~~swap meet event~~, or give written notice to every vendor prior to the commencement of ~~a swap meet~~ *the event* of the kinds of

1 ~~personal property or merchandise which~~ *that* may be not *be*  
2 offered for sale or exchange. The ~~swap meet owner or operator~~  
3 shall also post a sign at the main entrance of the ~~swap meet which~~  
4 *event that* states that vendors are required to issue receipts in  
5 accordance with subdivision ~~(a)~~ *(b)*.

6 SEC. 11. Section 21667 of the Business and Professions Code  
7 is amended to read:

8 21667. A violation of any provision of this article, except  
9 subdivision ~~(b)~~ *(c)* of Section 21666, is a misdemeanor and may  
10 be punishable by up to six months in county jail, a fine of fifty  
11 dollars (\$50) for the first violation, one hundred dollars (\$100) for  
12 the second violation, and two hundred dollars (\$200) for the third  
13 and subsequent violations.

14 SEC. 12. Section 21668 of the Business and Professions Code  
15 is amended to read:

16 21668. A chief of police of a city or the sheriff of an area  
17 outside of the city may waive any requirement of this article for  
18 ~~swap meet open air market~~ operators and *open air market* vendors  
19 in the city or area outside of the city if the chief of police or sheriff  
20 determines it is not necessary or appropriate in the public interest  
21 to impose the requirement. If the ~~swap meet open air market~~ is  
22 located in both the city and area outside of the city, the chief of  
23 police of the city has the authority to grant the waiver authorized  
24 by this section.

25 SEC. 13. Section 21669 of the Business and Professions Code  
26 is amended to read:

27 21669. (a) ~~All~~ *This section applies to both swap meets and*  
28 *open air markets.*

29 (b) ~~If a swap meets which are~~ *meet or open air market* is  
30 conducted two or more times per calendar year on any premises or  
31 property owned or leased by any city, county, city and county,  
32 state, or any other local governmental agency, entity, or board, *its*  
33 *operator* shall comply with all of the following procedures:

34 (1) ~~The swap meet operator~~ *He or she* shall have a valid  
35 business license.

36 (2) ~~The swap meet operator~~ *He or she* shall have a valid  
37 California seller's permit number (State Board of Equalization  
38 sales tax number), if applicable.

39 (3) ~~The swap meet operator~~ *He or she* shall provide the state or  
40 local governmental entities described in this subdivision upon

whose property the ~~swap meet~~ *event* is being held, a certificate of insurance certifying that ~~the swap meet operator~~ *he or she* maintains public liability and property damage insurance for the operation of the ~~swap meet~~ *event* of at least two million dollars (\$2,000,000), and that the policy names that governmental entity as an additional insured under the policy.

(4) ~~The swap meet operator~~ *He or she* shall provide the state or local governmental entity a hold harmless and indemnification agreement for ~~his or her~~ *the* operation of the ~~swap meet~~ *event* and activities and acts arising from ~~that swap meet~~ *it*.

(5) ~~The swap meet operator~~ *He or she* shall comply with all other provisions of this article relating to swap meets *or open air markets*.

~~(b)~~

(c) State or local governmental entities shall not operate or manage a swap meet *or an open air market* for profit in direct competition to a private enterprise, unless they comply with subdivision (a) of Section 21662, *or they conduct the event on the campus of a community college and both of the following conditions are met:*

(1) *The event is operated and managed by the community college district.*

(2) *The proceeds are used solely for charitable or educational purposes.*

SEC. 14. Section 21669.1 of the Business and Professions Code is amended to read:

21669.1. (a) *The provisions of this section apply to both swap meets and open air markets.*

(b) In addition to the requirements specified in subdivision ~~(a)~~ (b) of Section 21669, all swap meets *and open air markets* conducted on the premises or property of a state or local governmental entity ~~which~~ *that* has or expects to have an average daily attendance of 10,000 or more persons shall provide all of the following:

(1) A statement of ownership, including the identity of individuals holding a financial interest of 5 percent or more.

(2) A sworn statement that no individuals who have a financial interest of 5 percent or more in the ~~swap meet~~ *event* have been convicted of any crime involving dishonesty or moral turpitude.

1 (3) A financial statement showing the operator's financial  
2 capability to operate a major ~~swap-meet~~ *event* and to meet any  
3 financial obligations to the lessor and subcontractors.

4 (4) A statement that the operator is not knowingly delinquent  
5 in any payments owed to a state or local governmental entity and  
6 that he or she is not knowingly in violation of any state or local law  
7 or ordinance related to public health or safety standards.

8 (5) Evidence that the operator has a minimum of five years of  
9 experience in the management and operation of ~~a swap-meet~~ *an*  
10 *event* for profit with an average daily attendance of 5,000 or more.

11 (6) A plan for operations, including security, crowd control,  
12 sanitation, and emergency medical response.

13 SEC. 15. No reimbursement is required by this act pursuant  
14 to Section 6 of Article XIII B of the California Constitution  
15 because the only costs that may be incurred by a local agency or  
16 school district will be incurred because this act creates a new crime  
17 or infraction, eliminates a crime or infraction, or changes the  
18 penalty for a crime or infraction, within the meaning of Section  
19 17556 of the Government Code, or changes the definition of a  
20 crime within the meaning of Section 6 of Article XIII B of the  
21 California Constitution.

